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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In Re )  
 )  
IMPLEMENTATION OF THE CABLE )  
TELEVISION CONSUMER PROTECTION )  
AND COMPETITION ACT OF 1992 )  
 )  
BROADCAST SIGNAL CARRIAGE ISSUES )

MM Docket No. 92-259

COMMENTS OF CARIBBEAN COMMUNICATIONS CORP.  
D/B/A ST. THOMAS-ST. JOHN CABLE TV

Caribbean Communications Corp. D/B/A St. Thomas-St. John Cable TV ("St. Thomas-St. John"), hereby submits its Comments on the Commission's Notice of Proposed Rule Making in the above-captioned proceeding.<sup>1/</sup> The following is shown in support thereof:

I. INTRODUCTION

St. Thomas-St. John is franchised to provide cable television service to the residents of St. Thomas and St. John, United States Virgin Islands and is an interested party to these proceedings. As a cable operator located in a non-ADI television market, St. Thomas-St. John is particularly interested in the rules to be adopted concerning the definition of a television market in non-ADI areas. Additionally, as a subscriber to a service that delivers network signals via satellite for redistribution to its subscribers, St. Thomas-St. John is particularly interested in the rules to be adopted regarding retransmission of such signals.

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<sup>1/</sup> Implementation of the Cable Consumer Protection and Competition Act of 1992 (NPRM), FCC Rcd \_\_\_\_, FCC 92-499, released November 19, 1992. Comments on the NPRM are due on or before January 4, 1992. Accordingly, these comments are timely filed.

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## II. DEFINITION OF A TELEVISION MARKET FOR NON-ADI AREAS

Must carry rights inure to local commercial television stations with respect to particular cable systems when the local commercial television station is within the same television market as the cable system.<sup>2/</sup> The Commission has asked for comment on its proposal to adopt and incorporate into its rules, Congress' definition of a local commercial television station. NPRM, supra, FCC 92-499 at ¶17. The Commission would appear to have little discretion as to how to define a local commercial television station, at least insofar as its must carry rules are concerned. §614(h)(1)(A). Thus, whether it specifically adopts Congress' definition or not appears to be immaterial to the functioning of its must carry rules.

More importantly, section 614(h)(1)(C) of the Act<sup>3/</sup> provides that a broadcast station's market for purposes of the must carry provisions of the Act is the station's Area of Dominant Influence ("ADI") as determined by the Arbitron ADI Index. As the Commission noted, however, Arbitron only creates ADI's for counties located in the continental United States. NPRM, supra FCC 92-499 at ¶18. Arbitron does not create ADIs for areas, such as the United States Virgin Islands, in which St. Thomas-St. John operates.

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<sup>2/</sup> Pub.L. No. 102-385, 106 Stat. 1460 (1992) at §614 to be codified at 47 U.S.C. §534.

<sup>3/</sup> Pub.L. No. 102-385, 106 Stat. 1460 (1992) at §614(h)(1)(C) to be codified at 47 U.S.C. §534(h)(1)(C).

The Commission seeks comment on what the market should be for such areas. Id. The Act's legislative history provides little or no direction on how to treat such areas, presumably assuming that all areas over which the Commission has jurisdiction are located within an ADI.

Maintenance of localism is a primary component to Congress' must carry regime. House Report No. 628, 102d Congress 2d Sess. at 97. St. Thomas-St. John recommends therefore that the Commission adopt a scheme that looks to do that and only that. St. Thomas-St. John recommends that, insofar as the various island territories and possessions of the United States are concerned, a broadcast station's television market should be the particular island or island group concerned, i.e., the United States Virgin Islands would comprise one television market, Puerto Rico would comprise a television market, etc.

Television stations licensed to communities in the United States Virgin Islands would have must carry rights only with regard to cable systems operating in the United States Virgin Islands. Likewise television stations licensed to communities in Puerto Rico would have must carry rights only with regard to cable systems operating in Puerto Rico. This regulatory regime is particularly appropriate as far as the United States Virgin Islands are concerned.

The United States Virgin Islands are unique in that they constitute a specific locality with defined boundaries where the residents share common interests. The vast majority of its

residents are English speaking. Television programming from stations on the United States Virgin Islands is ordinarily of particular interest only to the residents of these islands while programming from other, unrelated, islands is of, at best, marginal interest.

By establishing markets in this fashion, the concept of localism is maintained. To the extent that a station believes it provides programming of interest to people located on another island, i.e., another market, it may avail itself of the inclusion process of Section 614(h)(1)(C).

Alternatively, or even perhaps in connection with the establishment of television markets as detailed above for non-ADI areas, at least insofar as the United States Virgin Islands are concerned, St. Thomas-St. John suggests that a must carry regime could be established whereby must carry rights inure to any English language station placing a Grade B contour over the community served by a cable system. Under this regime, carriage of non-English language stations placing a Grade B contour over the community would be optional at the discretion of the cable operator.

### **III. INCLUSION/EXCLUSION OF COMMUNITIES**

Section 614(h)(1)(C) permits the Commission to include or exclude particular communities from a television station's market. The Commission notes in the NPRM, that the provision does not specify who may submit such requests and requests comment on its proposal that both television stations and cable operators

may file such requests. NPRM, supra, FCC 92-499 at ¶19. The Commission's proposal that such requests can be filed by both broadcast stations and television operators is appropriate. As the Commission noted, not only did Congress not identify who may submit such requests, but it did not place any restrictions on who may file. Had Congress intended to limit the parties who could submit such requests it would have made this intention clear in either the legislation itself or at least the legislative history or conference agreement.

Moreover, little probability exists that a television station will submit a request to limit the number of communities in its television market. Similarly, little probability exists that a cable system will submit a request to expand a television station's market. Thus, Congress must have intended that both parties could submit requests to include or exclude communities from a television station's market.

#### **IV. RETRANSMISSION CONSENT**

The Commission has apparently determined that "out of market retransmission of a commercial television station's signal will occur only pursuant to a retransmission consent agreement."

NPRM, supra, FCC 92-499 at ¶¶45-47. Four explicit exceptions exist.<sup>4/</sup> This conclusion is ill advised insofar as the United States Virgin Islands is concerned since it could result in an almost total void of network television service to its residents.

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<sup>4/</sup> Pub.L. No. 102-385, 106 Stat. 1460 (1992) at §325(b)(2)(A)(B)(C)(D) to be codified at 47 U.S.C. §325(b)(2)(A)(B)(C)(D).

Currently only one commercial television station, WSVI-TV (ABC) Christiansted, VI, licensed to Antilles Broadcasting Corp., is operational in the United States Virgin Islands. The CBS affiliate, WBNB-TV, licensed to Benedek Broadcasting of Virgin Islands, Inc., has been off the air since Hurricane Hugo devastated the islands. While St. Thomas-St. John spent a significant amount of money to rebuild its system after Hugo (constructing a state of the art system), WBNB shows no prospects of returning to the air under the direction of Benedek or any other licensee. WTJX-TV, Charlotte Amalie, a PBS station licensed to the Virgin Islands Public Television System, is the only other television broadcast station currently operational in the United States Virgin Islands.

St. Thomas-St. John, which serves over 15,000 subscribers, is forced to import distant broadcasts of CBS and NBC affiliated stations in order to meet its subscribers' demand for network and English language fare. Study after study has shown that, while network viewing has slipped in recent years, television viewing, even by cable subscribers, is tilted toward network programming. Cable subscribers want network fare.

St. Thomas-St. John clearly serves the public interest. It is disadvantaged (and subject to being taken advantage of), however, in that it must import two of the three network signals. It and other like systems should not be penalized with the oner-

ous requirement that the consent of distant network stations be obtained before carriage.<sup>5/</sup>

Notably, the network affiliates benefit as a result of their carriage by St. Thomas-St. John and similarly situated cable operators. Viewership is increased as a result of their satellite distribution. Additional revenue can be generated as a result of a reach expanding beyond the borders of their local service areas.

St. Thomas-St. John pays a not insubstantial fee to secondarily transmit these signals. Additionally, twice yearly St. Thomas-St. John pays a significant amount of money along with its copyright statement of account. Indeed St. Thomas-St. John submitted \$126,592.75 to the Copyright Office as payment of its 1992/1 royalty fee.

To place an additional burden on St. Thomas-St. John by requiring it to obtain the retransmission consent of the distant network signals it imports to satisfy its viewers is contrary to the basic precepts of the Act. First, it places additional administrative burdens that must be considered along with other burdens mandated by the Act. More importantly, however, it could result in additional increased expenses for St. Thomas-St. John

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<sup>5/</sup> Essentially, with respect to its carriage of distant network stations, St. Thomas-St. John is no different than a multichannel video programming distributor that retransmits the same signals directly to a home satellite antenna, if the household receiving the signal is an unserved household. The retransmission consent provisions do not apply in such circumstances. Pub.L. No. 102-385, 106 Stat. 1460 (1992) at §325(b)(2)(C) to be codified at 47 U.S.C. §325(b)(2)(C).

in the form of retransmission consent payments (resulting in essentially a third charge for carriage of the same programming) which inevitably would be passed on to its subscribers in the form of a rate increase.<sup>6/</sup>

If the Commission affirms its tentative conclusion that "out of market retransmission of a commercial television station's signal will occur only pursuant to a retransmission consent agreement", NPRM, supra, FCC 92-499 at ¶¶45-47, the question of from whom must the consent be obtained also arises. St. Thomas-St. John submits that the right to consent to retransmission should rest with the affiliate broadcast station and not with the network itself. Giving consent rights to the networks rather than the affiliates greatly increases the chances that St. Thomas-St. John and other like systems will have to pay a third charge for carriage of the same programming. This is unjust and inconsistent with the Act.

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<sup>6/</sup> The Commission must seek to reduce administrative burdens on, inter alia, cable systems. Pub. L. No. 102-385, 106 Stat. 1460 (1992) at §623(b)(2)(A) to be codified at 47 U.S.C. §543(b)(2)(A).




### **CONCLUSION**

St. Thomas-St. John urges the Commission to adopt its proposals that non-ADI markets, such as the United States Virgin Islands, be considered television markets unto themselves for must carry purposes. St. Thomas-St. John also urges the Commission to consider its alternative must carry proposals concerning English language and non-English language television broadcast stations placing Grade B contours over communities in non-ADI areas. Finally, St. Thomas-St. John urges the Commission to reject its tentative conclusion concerning out of market retransmission of commercial television signals.

Wherefore, the premises considered, Caribbean Communications Corp. D/B/A St. Thomas-St. John Cable TV respectfully requests that the Commission consider its Comments in this proceeding.

Respectfully submitted,

**CARIBBEAN COMMUNICATIONS CORP.  
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